<u>REMARKS/ARGUMENTS</u>

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-36 are pending in the present application.

In the outstanding Office Action, Claims 1-36 were rejected under 35 U.S.C. §102(b) as anticipated by <u>Ramberg et al.</u> (U.S. Patent Publication No. 2003/0014505, hereinafter <u>Ramberg</u>).

It is first noted that MPEP §707.07(f) has also been violated. MPEP §707.07(f) indicates that a proper Action is to take note of the points raised in traversing such a repeated rejection and <u>answer the substance thereof</u>. The outstanding Office Action, in the response to arguments section, merely states "Please refer to the reference cited by the Examiner...." This does not answer the substance of Applicants previous arguments.

Second, it is noted that page 19 of the outstanding Office Action mischaracterizes the law. Page 19 of the outstanding Office Action states

> In response to applicant's argument that 1, 13, and 25, [sic] a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is noted that the Office Action provides no citations in support of this proposition. Furthermore, the Office Action does not indicate what language is not being given patentable weight. It is well established that each word of every claim must be given weight. <u>See In re Wilson</u>, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Claims 1, 13, and 25 do note recite an intended use. On the contrary, elements of Claims 1, 13, and 25 are defined functionally, which is an acceptable way to clearly describe and distinctly claim the subject matter regarded as the invention.

Controlling precedent does not support the conclusion that a claimed function can be ignored as the PTO attempts to do here. In this regard, In re Schreiber, 128 F.3d 1473, 1477-78 44 USPQ 2d 1429, 1431-32 (Fed. Cir. 1999) (cited as authority in MPEP §2114) does not support any theory that functional limitations can be ignored, rather this case requires that a reference structure used to reject a claim structure defined by what it does must INHERENTLY perform the claimed function. In this regard, it is well established that inherency requires **the certainty that something will happen**, not merely a possibility or even a probability that something may occur. See In re Robertson, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) and In re Oelrich, 212 USPQ 323, 326 (CCPA 1981).

Note the further discussion of functional limitations in MPEP §2173.05(g) that specifically treats the Swinehart decision (In re Swinehart 439 F.2d 210, 169 USPQ 226 (CCPA 1971)) mentioned in MPEP §2114 as noting that functional limitations defining structure by the function performed by that structure are valid claim limitations that this section instructs "must be evaluated and considered, just like any other limitation of the claim . . . ."

Moreover, Claim 13 is a means plus function claim, which has not been properly treated. The required analysis of the base Claim 13 recited "means" and associated functions has not been performed. In this regard, the PTO reviewing court recently emphasized that conclusory findings that omit analysis as to "means" claim limitations are improper in Gechter v. Davidson 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) as follows:

> In addition, the [PTO] never construed the scope of the structures disclosed in the specification for the claimed "receiving means," nor did the [PTO] expressly find that the "receiving means" disclosed in the specification was structurally equivalent to that embodied in [the reference]. Moreover, the [PTO] also failed to define the exact function of the receiving means, as well as to find that [the reference] disclosed the identical function. [Emphasis added, citation omitted.]

Furthermore, the outstanding Office Action is confusing in that it does not clearly indicate (i.e., by name and reference number) the elements in <u>Ramberg</u> that are believed to equate to the claimed "monitoring computer" and "monitored device." To facilitate the appeal process, it is requested that any future communication from the PTO clearly identify by name and reference number the claimed "monitoring computer" and "monitored device."

Claim 1 recites, *inter alia,*

> retrieving by the monitoring computer, from a first memory, information for accessing the monitored device using at least one communication protocol supported by the monitored device;

> storing by the monitoring computer, in a second memory, the information for accessing the monitored device retrieved from the first memory.

The outstanding Office Action, when rejecting Claim 1, refers to the MIB in the ADC device platform with respect to the first and second memories. However, as indicated by the different names, the first memory and second memory are different. The one MIB in the ADC device platform does not equate to the Claimed "first memory" and "second memory."

Furthermore, since above-noted steps are performed by the monitoring computer and the Office Action cites to the MIB of ADC 100, it appears that ADC 100 is considered to equate to the claimed "monitoring device."

However, when rejecting Claim 2, the outstanding Office Action states "[Ramberg] clearly shows on the use of remote computing system to monitor devices in the network."[1] This language indicates that the Office is taking the position that the remote computing system equates to the claimed "monitoring system." This is inconsistent with the above-noted positions taken with respect to the claimed "retrieving..." and "storing...."

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[1] Office Action, page 4.

It is respectfully requested that the Office reconcile this apparent inconsistency and issue a new Office Action.

Furthermore, the outstanding Office Action relies on paragraphs [0046] and [0047] of Ramberg to support the inconsistent position that ADC 100 is the monitoring device. However, Paragraph [0046] of Ramberg merely describes that TFTP is used to download software for FLASH memory upgrades for the ADC 100. Paragraph [0047] of Ramberg describes web support for JAVA applets for controlling different elements within the ADC 100. Downloading software for an upgrade is not monitoring, and does not support the position that ADC 100 is a monitoring computer.

The outstanding Office Action also relies on paragraph [0049] of Ramberg and Fig. 3 of Ramberg. Paragraph [0049] and Fig. 3 of Ramberg describe network system manager 110. However, the Office Action does not explain how this is relevant to either the claimed "monitoring computer" or "monitored device."

Furthermore, Applicants note that paragraph [0048] of Ramberg states:

> Using the unit management HTML, DHTML, and/or XML pages 231, the ADC platform HTTP server 230 provides information and applets, or small application programs, to the remote computing system 120, **allowing a remote service technician to control the ADC device platform 100 and to receive data from an ADC device, such as the ADC device 102**. The HTML, DHTML, and/or XML pages 231 located on the ADC platform device 100 reference unit management Java applets. Referencing a Java applet in an HTML page provides the mechanism for addressing that applet.

Paragraph [0048] of Ramberg describes that the remote service technician uses the remote computing system as a monitoring computer. The ADC device 102, is monitored by the remote monitoring computer.

However, the remote computing system does not perform the claimed

> retrieving by the monitoring computer, from a first memory, information for accessing the monitored device using at least

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one communication protocol supported by the monitored device;

storing by the monitoring computer, in a second memory, the information for accessing the monitored device retrieved from the first memory; [and]

selecting by the monitoring computer a communication protocol among the plurality of communication protocols, the monitored device being configured to process two or more of the plurality of communication protocols.

The remote computing system 120 of <u>Ramberg</u> uses only one communication protocol, that being SNMP. Paragraph [0007] of <u>Ramberg</u> describes that the communication between the remote service technician's computer and the ADC device platform is SNMP. The HTTP protocol discussed in paragraph [0007] is for communications between the remote computing system and an HTTP server. However, only SNMP is used between the remote computing system of the technician and the ADC 100. In <u>Ramberg</u>, the web browser is used as a front end of the remote computing system of the technician, but SNMP is used to communicate with the ADC 100. Particularly, paragraph [0007] states

In each ADC device platform of the plurality of the ADC device platforms, **a Simple Network Management Protocol ("SNMP") master agent communicates with the service technician's remote computing system.** An SNMP subagent translates a diagnostic query forwarded by the SNMP master agent into a format suitable for reception by the subsystem to which the query was directed. The SNMP subagent translates data received from the queried subsystem into the proper format for transmission to the SNMP master agent which forwards the data to the remote computing system. Once the data arrives at the remote computing system, it may be analyzed by the service technician.

Thus, the remote computing system used by the technician in <u>Ramberg</u> does not select a communication protocol among the plurality of communication protocols. There is only one protocol available and the claimed "selecting" is not performed.

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Moreover, paragraph [0030] of <u>Ramberg</u> states "According to one embodiment of the invention, **the remote service technician's web browser uses Java applets as the user interface and SNMP to communicate with ADC device platforms**" (emphasis added).

Moreover, paragraph [0024] of <u>Ramberg</u> describes the remote computing system used by the technician. Paragraph [0024] states

> **The remote service technician sends commands for controlling the ADC device platform over the communications network, such as the World Wide Web, through the network communications device to the ADC device platform. Commands passing over the communications network may arrive at the ADC device platform in a communications format different from the format required by the ADC devices connected to the ADC device platform.** Various subsystems on the ADC device platform translate information within the ADC device platform into appropriate communication formats.

Applicants note that the ADC 100 is connected to ADC devices (such as 102). The commands received by the ADC device 100 are translated into a format understood by the ADC devices 102 connected to the ADC device 100. Therefore, the outstanding Office Action is incorrect when it assumes that the ADC 100 is the monitored device. Paragraph [0024]] describes that the real monitored device is the ADC device 102 connected to the ADC 100.

Furthermore, the monitored device (ADC device 102) of <u>Ramberg</u> is not configured to process two or more of the plurality of communication protocols. On the contrary, ADC device 102 has its own format and the SNMP master agent and SNMP subagent translate the query to the particular format of the ADC device 102.[2] Thus, ADC device 102 is not configured to process two or more of the plurality protocols, and is only configured to process one protocol. Thus, the claimed "the monitored device being configured to process

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[2] <u>Ramberg</u>, paragraph [0025].

two or more of the plurality of communication protocols" is not disclosed or suggested by Ramberg.

Claim 1 also recites "directly accessing the monitored device using the selected communication protocol and the information retrieved from the first memory and stored in the second memory by the monitoring computer." The remote computing system 120 does not directly access the monitored device (ADC device 102). On the contrary, any query sent by the remote computer of Ramberg needs to be relayed through the SNMP master agent 220 before the query is sent to the ADC device 102. This is because the ADC device only processes data in one communication protocol, and the SNMP master agent has to convert the format of the query into SNMP and the SNMP subagent has to convert the SNMP into the one communication protocol used by ADC device 101 or 102. Thus, the remote computer 120 does not directly access the monitored device (ADC device 102).

It is well established that establishing anticipation requires the citation of a single prior art reference that discloses each and every element arranged together exactly as in the claimed arrangement. See In re Bond, 15 USPQ2d 1566 (Fed. Cir. 1990); Lindemann Maschinen Fabrik GMBH v. American Hoist & Derrick Co., 221 USPQ 481 (Fed. Cir. 1984); Ex parte Gould, 6 USPQ2d 1680 (Bd. Pat. App. & Int. 1987); and Ex parte Osmond, 191 USPQ 334 (Bd. Pat. App. & Int. 1973)). Thus, there must always be something in the single reference being relied upon that directs the person skilled in the pertinent art to bring together parts from different disclosed reference embodiments if anticipation is to be found. See In re Arkley, 172 USPQ 524, 526 (CCPA 1972) (Thus, for the instant [35 U.S.C. §102] rejection . . . to have been proper, the . . . reference must clearly and unequivocally disclose the claimed [subject matter] or direct those skilled in the art to the [claimed subject matter] without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference."). Thus, it is improper for the

Office to take inconsistent position as to what equates to the claimed "monitoring computer"

and "monitored device," and pick and choose various features from the multiple devices of

the system in Ramberg in attempt to reconstruct the claimed invention through impermissible

hindsight.

In view of the above-noted distinctions, the outstanding Office Action is defective

because it does not show how a monitoring device in Ramberg (i.e., remote computing device

120) performs the claimed

> retrieving by the monitoring computer, from a first
> memory, information for accessing the monitored device
> using at least one communication protocol supported by the
> monitored device;

> storing by the monitoring computer, in a second
> memory, the information for accessing the monitored device
> retrieved from the first memory;

> selecting by the monitoring computer a
> communication protocol among the plurality of
> communication protocols, the monitored device being
> configured to process two or more of the plurality of
> communication protocols; and

> directly accessing the monitored device using the
> selected communication protocol and the information
> retrieved from the first memory and stored in the second
> memory by the monitoring computer.

Furthermore, the failure of the Office to clearly identify what in Ramberg equates to

the claimed "monitoring device" and "monitored device" shows a disregard for controlling

precedent. Note In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1432-33 (Fed. Cir. 2002)

as follows:

> ... the agency tribunal must present a full and reasoned
> explanation of its decision. The agency tribunal must set forth
> its findings and the grounds thereof, as supported by the agency
> record, and explain its application of the law to the found facts.

In view of the above-noted distinctions, Applicant respectfully submits that Claim 1 (and any Claims dependent thereon) patentably distinguish over <u>Ramberg</u>. Claims 13 and 25, although of different statutory classes, recite elements analogous to those of Claim 1. Applicants respectfully submit that Claims 13 and 25 (and any claims dependent thereon) patentably distinguish over <u>Ramberg</u>, for at least the reasons stated for Claim 1.

Consequently, in light of the above discussion, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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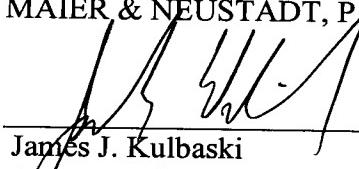
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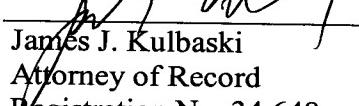
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